

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GLENNIS K. LANE,)	
)	
Plaintiff)	
)	
v.)	No. 2:22-cv-00058-JAW
)	
CITY OF ROCKLAND et al.,)	
)	
Defendants)	

ORDER

In response to the Defendants' pending motion to dismiss, Glennis K. Lane has filed a motion seeking leave to file an amended complaint.¹ *See* Motion to Amend (ECF No. 34); Proposed First Amended Complaint (ECF No. 34-1). The Defendants oppose Lane's motion on the ground that her proposed amendments are futile and do not remedy the purported deficiencies raised in their motion to dismiss.² *See* Opposition (ECF No. 35).

The Court has referred both the Defendants' motion to dismiss and Lane's motion to amend to me. For the sake of efficiency, I conclude that it would be preferable to address the merits of the Defendants' futility argument in the context of the motion to dismiss rather than the motion to amend; accordingly, I will **GRANT** Lane's motion to amend and will substitute her first amended complaint when making a recommended decision on the motion to dismiss. *See Fortuna v. Winslow*

¹ Lane previously filed an amended complaint, *see* ECF No. 23, but it was stricken for being filed without leave, *see* ECF No. 40.

² The Defendants do not oppose Lane's proposed amended complaint to the extent it eliminates her abuse of process claim. *See* Opposition at 1.

Sch. Comm., No. 1:21-cv-00248-JAW, 2022 WL 844046, at *3-4 (D. Me. Mar. 22, 2022) (following the same procedure in similar circumstances). Lane is ***DIRECTED*** to file her first amended complaint on the docket by January 13, 2023.

Because the legal standard is the same, *see Glassman v. Computervision Corp.*, 90 F.3d 617, 623 (1st Cir. 1996) (“In reviewing for futility, the district court applies the same standard of legal sufficiency as applies to a [Fed. R. Civ. P.] 12(b)(6) motion.” (cleaned up)), and because Lane’s amended complaint supplements, rather than drastically alters, her existing complaint, I will consider the arguments the parties raised in their briefing on the motion to amend in combination with the arguments they raised in their briefing on the motion to dismiss. The existing briefing appears to be sufficient for me to recommend a decision on the motion to dismiss, but I will give the parties until January 13, 2023, to notify me if they wish to supplement their briefing in light of this order. *See Fortuna*, 2022 WL 844046, at *4.

NOTICE

In accordance with Federal Rule of Civil Procedure 72(a), a party may serve and file an objection to this order within fourteen (14) days after being served with a copy thereof.

Failure to file a timely objection shall constitute a waiver of the right to review by the District Court and to any further appeal of this order.

Dated: January 6, 2023

/s/ Karen Frink Wolf
United States Magistrate Judge